



Billing Code 4333–15

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–R3–ES–2019–0007; FXES11130300000]

Receipt of Application for Enhancement of Survival Permit and Draft Candidate Conservation Agreement with Assurances/Candidate Conservation Agreement for Monarch Butterfly; University of Illinois at Chicago; Low-Effect Screening Form

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received an application from University of Illinois at Chicago for an enhancement of survival permit under the Endangered Species Act. The application includes an integrated programmatic candidate conservation agreement with assurances and a candidate conservation agreement (agreement) for the monarch butterfly. We have made a preliminary determination that the agreement is eligible for a categorical exclusion under the National Environmental Policy Act. The basis for this determination is contained in a low-effect screening form, which is also available for public review. We request public comment on the agreement and low-effect screening form.

DATES: We will accept comments received or postmarked on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. Any comments we receive after the closing date or not postmarked by the closing date may not be considered in the final decision on this action.

ADDRESSES: *Obtaining Documents for Review:* The documents this notice announces, as well as any comments and other materials that we receive, will be available for public inspection online in Docket No. FWS–R3–ES–2019–0007 at <http://www.regulations.gov>.

Submitting Comments: You may submit comments by one of the following methods:

- *Online:* <http://www.regulations.gov>. Follow the instructions for submitting comments on Docket No. FWS–R3–ES–2019–0007.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: Docket No. FWS–R3–ES–2019–0007; U.S. Fish and Wildlife Service; MS: BPHC; 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We will post all comments on <http://www.regulations.gov>. This generally means that we will post online any personal information that you provide (see **Public Availability of Comments** under **SUPPLEMENTARY INFORMATION**). We request that you send comments by only the methods described above.

FOR FURTHER INFORMATION CONTACT: Alisa Shull, Chief, Division of Endangered Species, via U.S. Mail at the Midwest Regional Office, U.S. Fish and Wildlife Service 5600 American Blvd. West, Suite 990, Bloomington, MN 55437; via phone at 612–713–5334; or via the Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Overview

We, the U.S. Fish and Wildlife Service (Service), have received an application from University of Illinois at Chicago (applicant) for an enhancement of survival (EOS) permit pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as

amended (ESA; 16 U.S.C. 1531 *et seq.*), for the monarch butterfly (*Danaus plexippus*).

The application includes an integrated programmatic candidate conservation agreement with assurances and candidate conservation agreement (Agreement) covering the conterminous 48 United States. The Agreement and associated permit would implement a voluntary conservation strategy developed by UIC for energy and transportation activities on enrolled lands. These activities include conservation measures to restore, maintain, enhance, or create habitat for monarch butterflies, as well as activities to conduct general maintenance, management, and modernization within existing rights-of-way and associated lands.

The intent of the Agreement is to provide non-Federal landowners in the covered area with the opportunity to voluntarily conserve the covered species and its habitat while carrying out their operations in a manner that would result in a net conservation benefit to the covered species. We have made a preliminary determination that the Agreement and permit application are eligible for a categorical exclusion under the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*). The basis for this determination is contained in a low-effect screening form, which is also available for public review. If approved, the EOS permit would be for a 50-year period following the signature of the Agreement and would authorize the incidental take of the monarch butterfly, if the species comes to be listed under the ESA.

Background

Candidate Conservation Agreement with Assurances

A CCAA is an agreement with the Service in which private and other non-Federal landowners voluntarily agree to undertake management activities and conservation efforts on their properties to enhance, restore, or maintain habitat to benefit species that are proposed for listing under the ESA, that are candidates for listing, or that may become candidates. The Service works with these partners to identify threats to candidate species, plan the measures needed to address the threats and conserve these species, identify willing landowners, develop agreements, and design and implement conservation measures and monitor their effectiveness. In return for managing their lands to the benefit of the species covered by the CCAA, participating property owners receive assurances that no additional conservation measures or land, water or resource use restrictions will be imposed under the ESA (beyond those agreed to in the CCAA) on covered activities on enrolled lands should any of the covered species ever be listed under the ESA. The Service provides these assurances through an EOS permit, issued pursuant to section 10(a)(1)(A) of the ESA for a specific number of years, that becomes effective if a species covered by the CCAA and permit is listed. Under the permit, participating landowners also receive authorization for take that is incidental to activities covered by the CCAA. In a case such as this, in which a third-party would administer the CCAA, the permit is issued to the third-party administrator (in this case, the University of Illinois at Chicago), and permit coverage extends to non-Federal landowners who enroll in the Agreement through a certificate of Inclusion (CI) and comply with the requirements stated in the Agreement and their respective CIs. Additional permit application requirements and issuance criteria for CCAAs are found in the Code of Federal Regulations (CFR) at 50 CFR 17.22(d) and 17.32(d), respectively, as well as 50 CFR part 13. Please also see our

joint policy on CCAAs, which we published in the *Federal Register* with the Department of Commerce's National Oceanic and Atmospheric Administration, National Marine Fisheries Service (81 FR 95164; December 27, 2016).

Candidate Conservation Agreement

In general, CCAs are voluntary conservation agreements between the Service and one or more public or private parties that identify specific conservation measures that the participants will voluntarily undertake to conserve the species covered by the agreements. Parties of a CCA do not receive the assurances associated with a CCAA, and CCAs typically address Federal lands. By addressing key threats to species on Federal lands, CCAs are particularly helpful in ensuring consistent application of a conservation strategy in situations, such as those which occur in the Coverage Area, where private activities occur on a mix of non-Federal and Federal lands. Because Federal agencies have special obligations for the conservation of listed species under section 7 of the ESA, CCAs for activities conducted on Federal lands do not include the assurances and the incidental take permit that are available to participants in a CCAA, all of whom by definition are non-Federal entities.

Proposed Action

Because the Agreement participants' properties cross Federal as well as non-Federal lands, the UIC is proposing an integrated programmatic CCAA/CCA to provide a seamless implementation of the conservation strategy across enrolled non-Federal and Federal lands at a landscape level. While the integrated Agreement applies throughout

enrolled lands, neither Federal agencies nor non-Federal partners would receive EOS permit coverage or “assurances” on activities conducted on enrolled lands that cross Federal property. Although there are no assurances associated with Federal lands, enrollees have a high degree of certainty that they will not be subject to increased land use restrictions by the Service if the covered species becomes listed under the ESA in the future. This regulatory predictability is provided through the programmatic conference opinion (developed as part of an ESA Section 7 consultation on the Agreement) for monarch butterfly. The Agreement is intended to demonstrate that adequate conservation measures, sufficient adaptive management, and monitoring obligations are in place to provide a net conservation benefit. In the conference opinion the Service evaluates the likely effects of the agreement on the monarch and it may be converted into a biological opinion on the effective date of any decision to list the monarch butterfly. The biological opinion would include an incidental take statement that describes the anticipated level of take from implementing the Agreement on Federal and non-Federal lands and provides a legal means to allow that take to occur. The Agreement provides a programmatic conservation strategy that results in a net conservation benefit to monarch butterflies throughout the lands enrolled. Private and non-Federal partners in energy and transportation sectors are encouraged to enter into the programmatic Agreement through UIC.

The proposed action involves the issuance of a section 10(a)(1)(A) EOS permit by the Service to UIC and approval of the proposed programmatic Agreement. The purpose of the Agreement and permit is to implement a conservation strategy that benefits

monarch butterflies throughout their range in the conterminous United States. The UIC would administer the Agreement and enroll eligible applicants, who would hold CIs. The Agreement and associated permit are proposed to cover 50 years from the time the Agreement is signed.

Under the proposed Agreement, UIC and partners who enroll into the agreement through UIC would create, enhance, and maintain habitat for monarch butterflies, as well as continue activities supporting operations of energy and transportation sectors, including general operations, vegetation management, and maintenance and modernization within existing rights-of-way and associated lands. The proposed Agreement does not include construction and land disturbing activities that pose significant environmental, socioeconomic, historical or cultural impacts (for example, interstate highways, pipelines, transmission lines, new rail routes, or similar).

Partners enrolled in the Agreement through UIC would hold a CI and be authorized for incidental take and assurances for monarch butterfly on non-Federal lands. Where enrolled partners have property interest across Federal lands, incidental take will be provided under a biological opinion prepared in accordance with section 7 of the ESA, granting them a high degree of certainty that additional conservation measures or limitations above those contained in the Agreement and CIs will not be imposed for monarch butterfly.

The conservation measures in this Agreement were designed to meet the net conservation benefit standard specifically for lands managed by the energy and transportation sectors. Unlike many other lands in the United States, those lands are already actively managed to prevent the growth of trees and woody vegetation. This results in lands that are generally maintained as grassland, meadow, prairie, or shrub-scrub type habitats, all of which provide habitat for species, such as the monarch butterfly, that depend on early successional plant communities and structures. We have worked with UIC to design conservation measures expected to have a net conservation benefit to the covered species within the covered area; however, landowners and enrollees would not have to conduct every activity in this list in order for their actions to have a net conservation benefit on the monarch butterfly. To maintain a net conservation benefit, each partner must use selected conservation measures to create and maintain a proportion of their enrolled lands as monarch habitat each year. Each partner will need to follow their individual CIs and the conservation measures included within. Some examples of these conservation actions include the following: (1) establishing and using native seed mixes containing a diversity of native wildflowers, including milkweed, as appropriate; (2) minimizing use of grazing in monarch habitat during peak breeding and migration periods to promote fall nectar plants; (3) removing woody plants in densely covered shrub areas and invasive plant species to promote grassland habitats; (4) sustaining idle lands with suitable habitat for monarch butterflies; and (5) using conservation mowing to enhance floral resources and habitat.

Covered Area

This agreement encompasses a covered area consisting of energy and transportation lands within the monarch butterfly's range across the lower 48 States. Within this covered area, Partners may enroll their energy and transportation lands (as enrolled lands). Although the covered area spans 48 States, only a portion of this area will be enrolled in the Agreement. Enrollment of lands under this Agreement is voluntary. The partners reasonably expect that monarch butterflies may occur in all or a portion of habitats on enrolled lands as a result of management actions undertaken through this Agreement. This Agreement will cover those properties that have existing, historic, or potential suitable habitat for monarchs across their range. Enrolled lands may include all or some combination of suitable habitat types or areas with the potential to create those habitats.

The scope of the covered area excludes documented overwintering sites such as overwintering groves along the California coast and other documented overwintering sites. Western monarchs use ecologically different habitat throughout both their breeding and migratory habitat as well as their overwintering grounds. Due to the ecological differences of these sites, documented overwintering sites are considered outside the scope of the covered area for the Agreement. Monarchs do also occasionally overwinter in other locations across the southern United States. These overwintering locations may be nonspecific or transient from year to year. For the purposes of the Agreement, only documented overwintering sites repeatedly relied upon for monarchs are excluded from the covered area.

National Environmental Policy Act Compliance

The issuance of a section 10(a)(1)(A) permit is a Federal action subject to NEPA compliance, including the Council on Environmental Quality regulations for implementing the procedural provisions of NEPA (40 CFR 1500–1508). The Service’s decision on whether to enter into the Agreement is a Federal action subject to NEPA compliance. The UIC’s proposed Agreement and related application for the Enhancement of Survival permit is eligible for categorical exclusion under NEPA.

As required by NEPA, we considered impacts to the human environment that would result from issuance of the requested permit. Entering into the Agreement is strictly a voluntary action for landowners, and the covered activities under the permit are generally activities already occurring on these properties (e.g., general operations, vegetation management, and maintenance and modernization within existing rights-of-way and associated lands). As explained in the draft low-effect screening form, we believe the agreement is a “low-effect” project and qualifies for categorical exclusion under NEPA, as provided by 43 CFR 46.205 and 43 CFR 46.210. The proposed Agreement creates and enhances monarch habitat, addresses ongoing maintenance and minor modernization activities, and does not include construction and land disturbing activities that pose significant environmental, socioeconomic, historical or cultural impacts (for example, interstate highways, pipelines, transmission lines, new rail routes, or similar). Therefore, we are proposing to categorically exclude this action from further analysis under NEPA.

Public Comments

We specifically request information and comments from the public via this notice on our proposed Federal action to enter into the Agreement and issue an EOS permit for monarch butterfly. Further, we specifically invite submission of information regarding the adequacy of the agreement per 50 CFR parts 13 and 17.

Written comments we receive become part of the administrative record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Next Steps

We will evaluate the enhancement of survival permit application, including the agreement and any comments we receive, to determine whether the application meets the requirements of section 10(a)(1)(A) of the ESA. We will also evaluate whether the section 10(a)(1)(A) enhancement of survival permit would comply with section 7 of the ESA by conducting an intra-Service section 7 consultation. If we determine that the requirements are met, we will issue a permit under section 10(a)(1)(A) of the ESA to UIC

in accordance with the applicable regulatory requirements. We will not make our final decision until after the end of the 60-day comment period and will fully consider all comments received during the comment period.

Authority

We provide this notice under section 10(c) of the ESA (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.22) and the NEPA (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1506.6; 43 CFR part 46).

Dated: April 4, 2019.

Charles Wooley,
Acting Regional Director,
Midwest Region.

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